

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-11-2007

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL No.392 OF 2002

S.Pitchai Namassivayam

... Appellant

-vs-

1.Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
Palghat Division,
Palghat.

2.Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Moore Market Complex,
Madras-600 003.

... Respondents

Appeal under Clause 15 of the Letters Patent. Writ Appeal against the order dt.21.9.2000 in Writ petition No.11687/1993. This petition presented to this Court under Article 226 of constitution of India to issue a writ of certiorarified mandamus and after calling for the concerned records from the respondent herein relating to the impugned order No.J/XP/509/PCF/SP/ASI/92 dated 29.6.1992 (EX-A) issued by the 1st respondent as confirmed by the order No.J/XP/509/PCF/SP/ASI/92 dated 10.11.1992 (EX-B) by the 2nd Respondent herein and quash the same and consquently direct the respondents herein to reinstate the petitioner in service with continuity of service and with all attendant benefits such as seniority, arrears of salary etc.

For appellant : Mr.N.G.R.Prasad,
for M/s.Row & Reddy.

For respondents : Mr.M.Vellaisamy

J U D G M E N T

S.PALANIVELU, J.

This appeal is filed by the writ petitioner against the order, dated 21.09.2000, made in W.P.No.11687 of 1993, wherein his prayer for reinstatement into service was rejected.

2. According to the appellant, he joined Railway Protection Force (RPF) as a Constable in the year 1963; he was promoted as Assistant Sub-Inspector of RPF (ASIRPF) in the year 1984 and posted at Coimbatore Railway Junction, under the control of one Govindarajan, Inspector of RPF. One Krishnamoorthy was the Sub-Inspector of RPF and another Krishnamoorthy was the Head Constable of R.P.F., attached to Special Intelligence Wing; that there were numerous anonymous petitions against the said Govindarajan, regarding purchase of motorcycle without permission and construction of a building in his native place and there were other complaints also to the effect that he used to consume liquor with two Constables at Guru Travels, Raja Travels etc., at Coimbatore; while so, Govindarajan smelt a rat on the appellant that anonymous complaints might have been shot at him, only at the behest of the appellant; hence, Govindarajan threatened the appellant and was waiting for an opportunity to cook up a case against the appellant and to see that he would be sent out from service; in the backdrop of the above circumstances, the appellant was proceeded with the charges and the said Govindarajan was the mastermind for the false charges against the appellant.

3. The allegations against the appellant go thus :

On 29.12.1991, from 08.00 hours onwards, the appellant was on duty. At 14.00 hours, some outsiders brought in a lorry bearing registration No.MDB 2569 and parked the same near Foot Over Bridge on a road leading to telephone exchange near RPF Post. The individuals, who alighted from the lorry had a talk with one Ramasamy, who was a Watchman, appointed by the contractor, to safeguard the stores in the Railway Junction. About 3000 old released railway tiles were stacked in the store, which were under the custody of Ramasamy. After a conversation with the said Ramasamy, the occupants of the lorry loaded about 2000 such tiles kept in the store and the lorry was about to leave the spot. At that point of time, the appellant came to the place and asked Ramasamy about his authority for removal of the railway property. The Watchman was brought to RPF Post by the appellant, for further interrogation. The Watchman promised and offered money to the appellant. He collected a sum of Rs.900/- from the occupants of the lorry and paid Rs.750/- to the appellant, keeping the remaining amount with him. After collecting Rs.750/-, the appellant allowed the vehicle to proceed with 2000 stolen railway tiles. One David, Supervisor of GS & Company, which is a Contractor, reported about the missing of 2000 railway tiles from the

railway old retiring room. The said complaint was lodged with RPF Inspector on 03.01.1992.

4. On getting information through some sources, Govindarajan, IPF, on 30.12.1991, made a preliminary enquiry and found that there were prima facie materials for framing charges and to conduct enquiry. Hence, the following charges were framed against the appellant :

"Charge No.1: Shri S.Pitchai Namasivayam, ASIPF/CBE is hereby charged under Rule 153 of RPF Rules 1987 for failure to maintain absolute integrity and devotion to duty in that he has unlawfully and wilfully permitted the removal of 2000 released Railway tiles stocked in the Contractor's Store nearby to RPF Post/CBE in lorry No.MDB 2569 ON 29.12.91 for monetary benefit.

Charge No.2 : ASIPF Pitchai Namasivayam having abetted an offence against the Rly.property on 29.12.91 as stated above failed to prevent the unlawful removal of released tiles belonging to Railway from Rly.premises and also to inform his superior officer about the incident which he was bound to do as a member of a disciplined force."

5. One P.K.Anandan, Assistant Security Commissioner, was appointed as the Enquiry Officer, who, on enquiry, gave a finding that the appellant was guilty of the charges. It was communicated to the appellant along with a show cause notice, for which, the appellant, on 11.06.1992, submitted a representation, denying the charges and explaining the incidents and other connected circumstances. Not content with the said representation, on 29.06.1992, the Divisional Security Commissioner, RPF, Palghat, issued proceedings, removing the appellant from service with effect from 01.07.1992, treating the period of suspension from 16.01.1992 to 30.06.1992 as the period of suspension only. The Writ Petition filed by the appellant was dismissed by the learned single Judge and hence he filed this appeal.

6. Mr.N.G.R.Prasad, learned counsel for the appellant, would vehemently contend that the Enquiry Officer had woefully failed to appreciate the materials on record in their proper perspective and had he analysed and scanned the available factors consciously, he might have come to a different conclusion, that the appellant was not guilty.

7. Repelling the said argument, learned counsel for the respondents would submit that the conduct of the enquiry was proper and the findings rendered by the Enquiry Officer were more appropriate.

8. The core of contention of the learned counsel for the appellant is that the version of Ramasamy is not corroborated by other two

witnesses, namely, Mohammed, lorry driver, and A.Ali, an iron scrap merchant, who were reportedly present at the time of occurrence in the place, and if the statements given by them are carefully scrutinised, it would come to light that they have not mentioned anything about the presence of the appellant at the place of occurrence, who merely stated that Rs.1,000/- was given to the Watchman and lorry driver got Rs.100/- from Ali.

9. During the course of preliminary enquiry by the Inspector, though both Mohammed and Ali did not speak about the role played by the appellant, one K.K.Anand Kumar, a Constable, who was on shift duty, during the relevant point of time on 29.12.1991 from 08.00 hours to 16.00 hours, specifically mentioned that the appellant was talking with an old man, who was a well known person to RPF Staff, however, he could not understand what they were talking.

10. On a perusal of the statements recorded by the Enquiry Officer and his findings, it is found that the enquiry was conducted properly.

11. In the recent judgment delivered by the Honourable Apex Court in MATHURA PRASAD vs. UNION OF INDIA [(2007) 1 SCC 437], considering the entire case law on the subject of judicial review, the Honourable Apex Court has categorically and in no uncertain terms has ruled:

"When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. A judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

12. The Supreme Court, in State of A.P. v. Rama Rao, 1964 (2) L.L.J. 150 : AIR 1963 SC 1723 : 1964 (3) SCR 25, has observed that the findings recorded in the domestic enquiry can be characterised as perverse, if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.

13. If the Court finds that the Enquiry Officer has arrived at erroneous findings, resulting in miscarriage of justice and deprivation of his livelihood, it could very well interfere with them as has been held by the Honourable Apex Court in Mathura Prasad case, cited supra.

14. Learned counsel for the appellant placed reliance upon a decision of the Apex Court in Hardwari Lal v. State of U.P. and others, 1999 (8) Supreme Court Cases 582, in which it was held thus :

"3. Before us, the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant."

15. In the above said case discussed by the Supreme Court, the complainant and another material witness were not examined. Hence, it was concluded that those two persons should have been examined and their non-examination was vital. But, in the case on hand, material witnesses have been examined and they have also mentioned about the role played by the appellant. In addition, the Enquiry Officer has rendered his findings, on the basis of convincing materials.

16. Yet another aspect put forth by the learned counsel for the appellant is that in Crime No.4 of 1999, Mohammed and Ali were the accused, however, the appellant was not on the array as accused and that very fact would be sufficient to conclude that the appellant is not guilty. The learned counsel would further submit that the High Court is fully competent to interfere with the findings of the domestic enquiry officer. For the said submission, he cited a Division Bench decision of this Court in State of Madras v. Kandaswamy, 1972 MLJR 374, in which it was held that the High Court is justified under Article 226 to examine the evidence to satisfy itself whether the conclusion of the Tribunal is correct. In the said decision, it was also observed that adequacy or inadequacy of evidence to support a finding is not within the jurisdiction of the High Court under Article 226; but when a complaint is made that there is no acceptable evidence at all to support the impugned conclusion of the Tribunal or that no Tribunal with a duty to weigh the evidence could possibly have come to that conclusion, it is the duty of the Court under Article 226 to find out whether the complaint so made is justified or not.

17. The learned counsel also drew attention of this Court to a decision of the Apex Court in Kuldeep Singh v. Commissioner of Police and others, 1999 (2) Supreme Court Cases 10, in which it was held as below :

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

18. We have bestowed our careful attention to the entire features in the enquiry report, whereupon we conclude that they are neither perverse nor based on no evidence.

19. Adverting to the proposition of law with regard to the contention of the appellant that he is not indulged in criminal case, this Court follows the decision of the Supreme Court in G.M.Tank v. State of Gujarat and another, 2006 (3) CTC 494 : 2006 (5) SCALE 582, in which it is held that though the degree of proof before the domestic enquiry officer and the criminal court is with a chain of difference, still, the honourable acquittal by the criminal court has to be taken note of.

20. It is also a settled law that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is its discretion in any way fettered.

21. In G.M.Tank's case (supra), it was further observed that the two proceedings, criminal and departmental, are entirely different; they operate in different fields and have different objectives and while the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with Service Rules.

22. Hence, it is to be observed in this case that though the appellant was not shown as accused in the criminal proceedings, initiation of departmental proceedings against him is not barred at all.

23. As an epilogue, one more point to be noticed in this matter is, the conduct of the appellant during the pendency of departmental proceedings against him, which is such that while the witness Ramasamy was coming to attend the departmental proceedings enquiry, the appellant, accompanied by two persons, threatened him with dire consequences, besides pushing him down, to which effect the said Ramasamy also gave a statement on 01.04.1992, which was forwarded to the Enquiry Officer by the IPF.

24. We have gone through the entire records, with rapt attention, which makes us to conclude that the guilt of the appellant has been proved in the domestic enquiry and, on the basis of which, he has been removed from service.

25. As regards the quantum of punishment imposed on the appellant, learned counsel for the appellant garnered support from a decision of the Supreme Court in U.P.SRTC v. Ram Kishan Arora, 2007 (4) Supreme Court Cases 627, wherein, referring to an earlier decision in U.P.SRTC v. Suresh Pal, 2006 (8) SCC 108 : 2006 SCC (L&S) 1905, it was observed as under :

"9. In U.P.SRTC v. Suresh Pal, 2006 (8) SCC 108 : 2006 SCC (L&S) 1905, this Court stated the law, thus : SCC pp.110-11, paras 8-9)

'8. Normally, the courts do not substitute the punishment unless it is shockingly disproportionate and if the punishment is interfered or substituted lightly in the punishment in exercise of their extraordinary jurisdiction then it will amount to abuse of the process of court. If such kind of misconduct is dealt with lightly and the courts start substituting the lighter punishment in exercising the jurisdiction under Article 226 of the Constitution then it will give a wrong signal in the society. All the State Road Transport Corporations in the country have gone in red because of the misconduct of such kind of incumbents, therefore, it is time that misconduct should be dealt with an iron hand and not leniently. "

26. There is no quarrel with regard to the proposition laid down by the Honourable Apex Court in the above judgment. However, in the case on hand, the charges levelled against the appellant, who is expected to maintain complete devotion and diligence, are very grave in nature. Since it has already been held that all the procedures contemplated under law have duly been complied with by the Enquiry Officer, affording sufficient and reasonable opportunities to the delinquent and has arrived at an unerring conclusion that the charges are proved and the disciplinary authority has also inflicted a just and quite proportionate punishment on the delinquent, we find no ground to cause our interference into such well reasoned findings arrived at by the Enquiry Officer and the punishment imposed by the disciplinary authority.

In the light of the above discussions, we hold that the order of the learned single Judge is quite in order and it deserves to be confirmed, consequent to which, this Writ Appeal stands dismissed. No costs.

dixit/Rao

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
Palghat Division,
Palghat.

2.The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Moore Market Complex,
Madras-600 003.

+1 cc to Mr.M.Vellaisamy, Advocate Sr.No.69890.

+1 cc to Row & Reddy, Advocate Sr.No.69706.

AKR(CO)
dcp/30.11

W.A.No.392 OF 2002